

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8233 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MA PATEL & 5

Versus

STATE OF GUJARAT & 1

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Appearance:

MRS KETTY A MEHTA for Petitioners  
MR ND GOHIL AGP for Respondent No. 1  
MR DA BAMBHANIA for Respondent No. 2

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 10/07/97

ORAL JUDGEMENT

The moot question that arises for my consideration is - which are the tests required to be satisfied by the Government servants for becoming entitled to Selection Grade. The Selection Grade is nothing but a higher pay scale sanctioned for the Government servants in the same cadre on their satisfying

certain tests. What should be such test, was governed by the instructions contained in Government Circular dated 18th December, 1950, issued by the former State of Bombay. The State of Gujarat, having reconsidered the matter, issued a Circular on 20th November, 1962. The Government decided that a person should be promoted to the Selection Grade on the same basis as that for promoting to a higher cadre of service. Upon reading the said Circular (Annexure-B to the petition) Government's intention to promote a Government servant to a Selection Grade provided he satisfies the same tests as if he were promoted to a higher pay-roll is apparent. In other words, Government servant could be promoted to a Selection Grade only if he were otherwise eligible for further promotion as well as was meritorious enough to earn further promotion to a higher cadre. The riggers of the said Circular appears to have been reduced under the Government Resolution dated 26th December, 1974. Under the said Resolution, the tests for grant of promotion to cross EB were adopted for promotion to Selection Grade also. The said instructions were again altered under the Government Resolution dated 17th January, 1976. The Government once again decided that the Government servant can be promoted to Selection Grade on the basis of merits. The said Resolution was followed by Resolution dated 10th February, 1976 (Annexure-D to the petition). The same tests which were provided under Government Circular dated 20th November, 1962, were re-introduced under the above referred Resolution. The relevant portion of the said Circular reads as under :

" The test applied for promoting a Government servant whether Gazetted or non-Gazetted to selection grade should be the same as that for promotion to higher cadre or service, so far as standard of Confidential Reports, passing of Departmental examinations etc. are considered ".

A perusal of the above referred provision clarifies the Government's intention to grant Selection Grade to the Government servants who are otherwise eligible and suitable for promotion to the post in higher grade, i.e. unless a Government servant has become eligible for promotion to a higher post by acquiring necessary qualification and experience and unless he is found suitable for such promotion, he can not be granted Selection Grade either. Thus, in my view, since 10th February, 1976, a Government servant can claim Selection Grade only if he is eligible for promotion to a higher

post and he is found suitable for such promotion.

2. Petitioners, in the present petition, are the Government servants serving under the Department of Accounts and Treasuries. They are all serving either as the Superintendents or as Deputy Accountants. The said posts constitute Group-III service in the Department of Accounts and Treasuries. All the petitioners were given Selection Grade with effect from different dates in the years 1980 to 1982 referred to in the orders dated 12th September, 1980; 10th August, 1981; 8th April, 1981; and 28th January, 1982 (Annexure-F to the petition). At the relevant time, the petitioners had not passed the in-service Departmental Examination which is a pre-requisite for further promotion to Group-II service in the Department of Accounts and Treasuries. Considering this, the question of grant of Selection Grade to the petitioners and some others, appears to have been re-examined. On 11th July, 1991, an order was made cancelling the orders of Selection Grade made earlier in favour of the petitioners and some others. Feeling aggrieved, some of the affected Government servants preferred a writ petition before this court. The said writ petition was disposed of with a direction to afford an opportunity of hearing to all the Government servants concerned. Pursuant to the said order, all the petitioners and others were afforded an opportunity of making a representation and of personal hearing. After having completed the above referred formalities, on 15th October, 1994 an order was made cancelling the orders of grant of Selection Grade to the petitioners and some others. The said order was made in all against 88 persons. Pursuant to the said order dated 15th October, 1994, under order dated 2nd August, 1995, the petitioners and some others were given Selection Grade from the dates later to the dates on which such Selection Grade was granted under the orders at Annexure-F. Said order further stipulated that the pay of the Government servants concerned shall be fixed accordingly and the difference of salary be recovered. Feeling aggrieved, the petitioners have preferred this petition.

3. Learned advocate Mrs. Mehta has appeared for the petitioners and has contended that the petitioners were eligible for grant of Selection Grade irrespective of the fact that they had not passed the requisite departmental examination. In view of the discussion in paragraph-1 of this judgment, the contention requires to be rejected. If passing of the departmental examination was a pre-requisite for claiming further promotion, same should be pre-requisite for claiming Selection Grade also. It

is not disputed that neither of the petitioners, at the relevant time, had passed the departmental examination.

4. Mrs. Mehta has next relied on the relevant Examination Rules, and has contended that considering the provisions made in the said Rules, the petitioners can not be said to be ineligible for promotion on the date on which they were granted Selection Grade. She has particularly relied upon Rules 5, 7 and 9 of the Gujarat Accounts and Treasuries Department (Subordinate Accounts Service Examination) Rules, 1975 (Annexure-E to the petition). Rule 5 (1) provides that in order to be eligible for promotion to a post in Group-II, a person holding a post in Group-III or IV shall be required to pass Part-I of the Subordinate Accounts Service Examination within a period of three years. Rule-6 provides that the relevant examination shall have to be passed in not more than three chances within the specified period. Rule-7 provides that where a qualified person is not available for promotion to a post in Group-II, or Group-I, an unqualified person whose specified chance to pass part-I of the examination are not exhausted, may be promoted to officiate in Group-II or Group-I, subject to the condition that he shall be reverted on availability of a qualified person for promotion or on his failure to pass the relevant examination within the prescribed period and according to the chances specified in Rules 5 and 6, whichever event occurs earlier. Rule 9, interalia, provides that where a person holding a post in Group-III fails to pass Part-I of the Examination within the specified period and specified chances available to him, shall notwithstanding such failure, be eligible to appear at any time in relevant part of the examination, and if he passes the examination, he shall be eligible for promotion to Group-II. Proviso to the said Rule provides that such a person shall not be entitled to claim seniority over the persons who have been promoted in the cadre of a post in Group-II on account of their having passed the departmental examination earlier. Mrs. Mehta has contended that in view of the provision contained in Rule-7, petitioners could have been promoted to posts in Group-II. All that the petitioners would lose on account of late passing of the examination, would be seniority. Thus, runs her submission, that passing of the departmental examination is not a sine-qua-non for the purpose of promotion and petitioners could not have been denied Selection Grade on the ground of failure to pass the examination. I am unable to accept this argument also. If such a contention were accepted, the provision contained in Rule-5 would become nugatory. Rule-5

provides that for further promotion to post in Group-II persons holding posts in Group-III shall be required to pass the Part-I of the Subordinate Account Service Examination. In my view, this is a mandatory provision and passing of the said departmental examination is a sine-qua-non for promotion to post in Group-II. The petitioners, therefore, can not be said to have become eligible for promotion unless and until they pass such examination. Rule-7 empowers the authority to promote an unqualified person in case qualified person is not available. This is merely an enabling provision, but for which, unqualified person could not have been promoted at all. This provision can be invoked only in case of necessity. Same does not confer any right to claim promotion to a person who has not passed the departmental examination. Petitioners, therefore, could not have claimed promotion under Rule-7 before they passed the departmental examination as of right. I, therefore, hold that the person would become eligible for promotion only after he passes the departmental examination as provided in Rule-5.

5. Mrs. Mehta has next relied upon the impugned order dated 2nd August, 1995. She has pointed out that considering their eligibility, the petitioners have been given Selection Grade with effect from the dates later than the dates on which they were granted Selection Grade earlier. Thus, in any view of the matter, petitioners became eligible to Selection Grade long before the impugned order of cancellation of the Selection Grade was made. She has submitted that neither of the petitioners had ever claimed Selection Grade, nor they had applied for the same. Respondents had of their own considered the petitioners' case for Selection Grade and granted them the same under orders at Annexure-F. Said orders were not made either at the instance of the petitioners, nor on account of any mis-representation made by the petitioners. If the respondents had committed a mistake in granting the said Selection Grade, the petitioners shall not be made to suffer for the said mistake. She has also relied upon Rule-57A of the Bombay Civil Services Rules, and has submitted that in view of sub-rule (ii) thereof also, no recovery can be made under the impugned order. I do find substance in this contention raised by Mrs. Mehta. The petitioners were granted Selection Grade as far back as in the years 1980, 1981 and 1982. Respondents have not realised their mistake till 1991 and it was for the first time in the year 1991, that the said orders granting Selection Grade were cancelled. Even the impugned order has been made in the year 1995. I do not find any justification in

Government asking for recovery 15 years after the orders of granting Selection Grade were made. The order of recovery made under the impugned order is, therefore, required to be quashed and set aside. I, therefore, do not express any opinion on the construction of Rule 57A of the Bombay Civil Services Rules.

6. In view of the above discussion, this petition is partly allowed. Paragraph-3 of the impugned order dated 2nd August, 1995 is quashed and set aside. Respondents are permanently restrained from recovering the difference of amount of Selection Grade from the petitioners. Rule is made absolute accordingly. There shall be no order as to costs.

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JOSHI